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Staff Report: Appeal Substantial Issue Determination

Local government.....City of Pismo Beach

Local Decision.....Local Permit # 04-0167 - Approved w/o conditions.

Appeal NumberA-3-PSB-05-002

Applicant.....Mark S. & Sandra L. Yandow

AgentRandy Dettmer

AppellantsTim Page and Commissioners Meg Caldwell and Sara Wan

Project location.....188 Seacliff Drive, Pismo Beach (APN 010-505-014).

Project descriptionConstruction/expansion of an existing residence (garage) to within 5 ft. of the property line and within or on top of an existing vertical access path.

File documents.....City of Pismo Beach certified Local Coastal Program; Coastal Development Permits 04-0167 and 03-0177.

Staff recommendation...Substantial Issue Raised

Summary: The Applicant proposes a 125 square foot expansion to an existing two-story, 4,320 square foot single-family residence in the Seacliff Planning area of Pismo Beach in San Luis Obispo County. The subject site is a blufftop lot of approximately 10,976 square feet and contains a coastal access path used by the public for more than 30 years. The proposed expansion will encroach onto the access path and is likely to preclude access entirely. The City approved the project without conditions, finding it consistent with the certified Local Coastal Program.

The appellant's contend that: 1) the approval does not ensure the public's right to gain access to the beach; 2) the approval should have required provision of vertical access and measures to minimize access impacts during construction; 3) the approved expansion is inconsistent with the requirements for maintaining public vertical access; 4) there is unpermitted development within the blufftop area; 5) the project is inconsistent with the conservation, open space, an growth element policies of the LCP.

Staff recommends that the Commission determine that **a substantial issue** exists with respect to the grounds on which the appeal has been filed. In particular, the appeals raise a substantial issue regarding project conformance to Coastal Act and LCP policies prohibiting new development from interfering with the public's right of access to the sea and the provision of



California Coastal Commission
March 18, 2005 Meeting in Newport Beach

Staff: M. Watson Approved by:

vertical access from the nearest public roadway to shoreline in all new development projects. The City acknowledged the historic use of the path and the potential impacts on access to the coast, but concluded that there was no clear nexus to require access as mitigation for the impact. Nor did they contemplate denying the project to ensure that access would continue to be provided.

As noted above, the access path has been in use for quite some time. Aerial photos from 1972 show the path in approximately the same location at least six years prior to the original construction of the house in 1978. The access path leads to the only shoreline access in the Seacliff and Spyglass planning area neighborhoods, and provides an important link between three blufftop parks along a 0.5-mile stretch of coast. The access path is identified in the Commission's California Coastal Access Guide (1st – 6th Editions, 1981 – present) and may prove to be a logical link in the California Coastal Trail.

Therefore, staff recommends that the Commission find that a substantial issue is raised by the appellants' contentions, and that the de novo hearing on the project be continued to a later date to allow for further investigation of the prescriptive use of the access path.

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Exhibits

1. Vicinity Map
2. Parcel Map
3. Site Plan
4. Appellants' Contentions
5. City Action on CDP 04-0167
6. Site Photos



I. Local Government Action

On September 28, 2004, the Pismo Beach City Council upheld the Planning Commission decision [denied an appeal by Tim Page] to grant a major modification to the previously approved SFR redevelopment and expansion without special conditions (see Exhibit 5 for the City's action).

II. Summary Of Appellants' Contentions

Please see Exhibit 4 for the full text of the appeal.

The appellants, Tim Page and Commissioners Wan and Caldwell, have appealed the final action taken by the City on the basis that approval of the project is inconsistent with Public Access policies of the Pismo Beach certified Local Coastal Program and the Access policies of the Coastal Act, guaranteeing the public's right to gain access from the first public road to the sea.

III. Standard of Review for Appeals

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable to the Coastal Commission because it is located between the first public road and the sea and within 300 feet of the top of the bluff.

The grounds for appeal under section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program in order to issue a coastal development permit. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter Three of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is located between the first public road and the sea.



IV. Staff Recommendation On Substantial Issue

The staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeal was filed pursuant to Coastal Act Section 30603.

MOTION: I move that the Commission determine that Appeal No. A-3-PSB-05-002 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

STAFF RECOMMENDATION:

Staff recommends a NO vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-3-PSB-05-002 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

V. Recommended Findings and Declarations

A. Project Location and Description

The project is located at 188 Seacliff Drive in the Seacliff Planning area of Pismo Beach. The Seacliff Planning district is located northwest of the Shell Beach neighborhood planning area and directly adjacent to [southeast] of the Spyglass Planning area and Spyglass Park. Development in Seacliff is comprised of fairly large, modern single-family residences on lots ranging between 6,000 square feet and roughly 12,000 square feet. There are only a few unimproved lots.

The planning area geology is comprised of unconsolidated marine terrace deposits overlaid on top of more consolidated bedrock materials such as Monterey Shale and Obispo Tuff. The bluff face is rather steep, rising nearly vertically to 50'+ above sea level. As a consequence, there is no direct shoreline access to the pocket cove beach or surf area below. Along the bluffs fronting the planning area, there is an improved blufftop park (i.e., Memory Park) and scenic overlook deck (i.e., Vista Point) that is available to the public. See Exhibit 6.

The project site is located in the northwest corner of the planning area on a 10,976 square foot lot (please see Exhibit 3 for project plans) and is improved with a single-family home of approximately 4,320 square feet. Along the northern property line there is an informal access



path that has been used by the public prior to construction of the residence in 1978 and continuing until mid-2004 when the homeowner fenced it off. The access path is roughly 10' in width and provides a vital link to the adjacent Spyglass Park and the shoreline below. The City approved a complete remodel and 500 square foot expansion of the residence in February 2004 that by itself would not have impacted the coastal access. However, in September 2004, the City approved a major amendment to the permit authorizing another 125 square foot expansion of the residence (i.e., 5' X 25' expansion of the garage) to within 5' of the northern property line. The garage expansion encroaches into the area of the lot historically used for public access. The City authorized approval of the development without special conditions for provision of vertical access as required by the LCP or limitations on development to ensure continued use of the access path by the public. It is the major amendment approved by the City that is the subject of this appeal.

B. Substantial Issue Determination

1. Public Access

a. Relevant Coastal Act and Local Coastal Program Provisions

The Appellant's have raised a number of access related issues relevant to the project. The access issues raised correspond to LCP or Coastal Act policies, and the proposed development's conformance with those policies. Applicable Coastal Act and LCP Public Access policies include:

Coastal Act Policy 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization...

Coastal Act Policy 30212

Public access from the nearest public roadway to the shoreline and along the coast shall be provided in all new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) Adequate access exists nearby, or (3) Agriculture would be adversely affected...

Applicable City of Pismo Beach LCP policies regarding public access are as follows:

GP/LUP Access Component Background

The City of Pismo Beach has a tradition of shoreline access. The purpose of this shoreline access component is to implement the state Coastal Act shoreline access policies, thus continuing to ensure the public's right to gain access to the shoreline.



Zoning Ordinance 17.066.010 – Purpose of Zone

The Coastal Access Overlay Zone is intended to carry out the requirements of Section 4 of Article X of the California Constitution to ensure the public's right to gain access from the nearest public roadway to the shoreline...

In implementing public access policies applicable to developments in the California Coastal Act and the City of Pismo Beach Local Coastal Program, vertical and lateral accessways shall be required as a condition of development pursuant to the requirements of the certified Local Coastal Program Land Use Plan.

GP/LUP Policy PR-33: Permitted Development in Blufftop Access Areas

Development permitted in the areas reserved for public blufftop access or recreation shall be limited to structures and facilities designed to accommodate recreational use of the area...In no case shall any development except public access paths and access facilities and public stairways be permitted within the bluff retreat setbacks identified in site specific geological studies.

GP/LUP Policy PR-24: Perpendicular Access to Shoreline Required

Public access perpendicularly from the nearest public roadway to the shoreline shall be provided in new development projects except where protection of fragile coastal resources prevents access or adequate public access already exists nearby (generally within 500 feet or as shown on Figure PR-3). Existing blufftop single-family lots less than 10,000 sq. ft. in area are exempted from this requirement.

Zoning Ordinance Standard 17.066.020.8

Public access from the nearest roadway to the shoreline and along the beach shall be provided in new developments except where protection of environmentally sensitive habitats prohibits such access or adequate public access exists nearby unless impacts associated with the accessway are adequately mitigated.

Zoning Ordinance Standard 17.066.020.10

Vertical accessways as required in the GP/LUP are required within each shoreline planning area. This access shall be from the first public roadway to the shoreline (or bluff edge if access is required to reach a blufftop viewing area). Vertical accessways within existing or proposed developments or subdivisions should be a minimum of ten feet in width and no access path shall be sited closer than ten feet to any existing or proposed residential structures or five feet to any motel room.

GP/LUP Policy P-22: Public Shoreline Access

The continued development and maintenance of public access to the Pismo Beach coastline shall be considered an integral and critical part of the City's parks and recreation program.



b. City Action

On September 28, 2004, the Pismo Beach City Council approved Major Amendment 04-0167 to Coastal Development Permit 03-0177 without conditions. The major amendment authorizes a 125 square foot expansion to the previously approved and relocated garage along the northwest side of the house and in the area of a well-used coastal access path. The original permit authorized the complete remodel and 500 square foot expansion to the existing 3,820 square foot single-family residence. The property owner requested the additional [garage] expansion after learning that the residence addition would have to be reduced by 20 square feet because it could not be accommodated and still conform to the required sideyard setbacks. The City action acknowledged the existence of the access path and the potential for the new development to adversely impact the use of the path by the public, however it did not include mitigation in the form of a vertical access easement as required by the LCP or any other conditions to ensure the public's right to pass would be preserved. Staff report findings indicate that the City was concerned about litigation and concluded that there wasn't sufficient nexus to require vertical access as mitigation for the project.

c. Analysis

1. History/Background

1978 Coastal Development Permit

On February 10, 1978, the South Central Coast Regional Commission issued a coastal development permit (152-01) for the construction of a single-family residence at 188 Seacliff Drive in the City of Pismo Beach, subject to special conditions including execution and recordation of an offer to dedicate (OTD) public access easement along the [north] westerly boundary of the property. The stated purpose of the vertical access condition was for "public access to the beach." As evidenced from early aerial photos, the access path had been in use long before the Commission's action to approve development of the site (i.e., before 1978), a fact which probably helped them come to their decision. After construction of the residence in late 1978, the public continued to use an approximately a 10' wide area between the house and northwest property line to gain public access to the park and shoreline. When the General Plan/Coastal Land Use Plan of the City's LCP was certified in 1982, the coastal access path along the northern property boundary of 188 Seacliff was not identified in the Access Element. According to the terms of the offer, the OTD expired in December 1990 prior to being acquired by the City or other suitable public or private agency, and prior to being identified in the certified LCP. Nonetheless, access continued unabated until the fall of 2004 when the new owners of the property commenced construction of the remodel and addition and fenced off the access path to preclude public passage.

2. Public's Right of Access to the Sea

The Appellant's contend that the City's action does not adequately ensure the public's right of access to the sea will be preserved. Both sections 17.066.010 of the City's zoning ordinance and



30211 of the Coastal Act require that development not interfere with the public's right to gain access to the sea whether acquired by use or legislative authorization. In this particular instance, there is strong case for establishing historic use of the access path. Aerial photos of the site clearly indicate that access was occurring across the property in roughly the same location at least 6 years prior to the construction of the original house in 1978. Subsequent photos also indicate that use of the path continued without interruption over a period of 30 years. Additionally, the Commission acted to authorize public access across the property when it approved the development permit for the original residence. As a condition of the permit, the original property owner was required to record an offer to dedicated public access easement for permanent access to the beach. Unfortunately, the offer to dedicate expired in 1990 prior to being accepted by the City or a suitable public or private agency. In any case, access continued unabated across the property for another 14.5 years, until mid-2004 when the new homeowner fenced it off. The coastal access path has also been memorialized in the Commission's California Coastal Access Guide, 1st – 6th Editions (since 1981) and because of its location, may someday prove to be a logical link in the California Coastal Trail. Accordingly, the City authorized development that will adversely impact access historically used by the public, contrary to LCP and Coastal Act provisions. The City's action acknowledged the historical use of the site, yet did not include any measures to ensure that access would be preserved. And if the current fencing across the access path is any indication, the property owner intends to prohibit access from occurring across the property at any time in the future. Thus, a substantial issue is raised.

3. Vertical Access Required

The applicant's second contention is that the city-approved project is inconsistent with the LCP and Coastal Act policies requiring vertical access in all new development. Coastal Act Section 30212, as well as, LCP policies PR-24 and 17.066.020.8 all require that vertical access public access from the first public road to the sea be provided in new development except where fragile coastal resources, public safety, and national security prevents access or adequate public access exists nearby. In this particular instance, there are no fragile coastal resources or national security issues. The access path traverses a level blufftop lot between two existing homes and no known potential safety hazards. The City approved expansion of the residence will encroach within and on top of a well-known and utilized vertical coastal access path to Spyglass Park and the shoreline below. Many users of this access path are destined for the surf-break just offshore known as St. Ann's. As evidenced by the recent erection of fencing across this accessway, the development will permanently preclude public access to the park and the beach below. The nearest alternate access point to Spyglass Park and the beach access path requires a 0.25 mile detour through the Seacliff neighborhood and is located on private property. Additional access to Spyglass Park and the beach can be gained through the Spyglass planning area neighborhood, though it requires an approximate 1-mile detour from the access path at 188 Seacliff. The City-approved project did not include provision of a public vertical access or require specific measures/conditions to safeguard public access during and after construction and is therefore inconsistent with Coastal Act and LCP standards. Accordingly, a substantial issue is raised.



4. Development Inconsistent with Vertical Access Standards

The appellant's contend that the approved development is inconsistent with the standards for providing public vertical access. Zoning Ordinance section 17.066.020.10 specifies that vertical access paths shall be 10' in width and sited no closer than 10' to any existing or proposed residential structure. The existing access path is located between the northwest property line and the residence at 188 Seacliff Drive; the original construction of the residence was setback to accommodate the access path. The City's approval authorizes construction in the northwest sideyard to within 5' of the property line and on top of the existing access path. Aside from creating a non-conformity, there are trees, vegetation, and other improvements that may preclude access in this alignment. Therefore, a substantial issue is raised.

5. Permitted Development in Blufftop Access Areas

The appellant's contend that the approved development does not conform to LCP standards for development in the bluff retreat setback area. Land Use Plan policy PR-33 restricts development in areas reserved for blufftop access to structures or facilities designed to accommodate recreational use of the area. PR-33 prohibits all non-access related development within the blufftop retreat setback area identified in site-specific geologic studies. In order to prevent the public from utilizing the existing access path, the property owner erected solid fencing across the entrance to the access path within the bluff retreat setback area. Although, section 17.102.120 of the zoning ordinance does allow for see-through fencing in R-1 districts up to 4' in height with a coastal development permit, it is unlikely that the City would permit an 8' plywood fence or any fence across a public access path, as was done at 188 Seacliff. Therefore a substantial issue is raised.

d. Substantial Issue Conclusion

The City approved an expansion of an existing single-family residence that will adversely impact the public's ability to access the beach from the Seacliff planning neighborhood. The City's action also did not contain adequate measures to ensure the public's right to gain access from the first public road to the sea would be preserved during and after construction of the approved remodel and addition. The access path leads to the only shoreline access in the Seacliff and Spyglass planning area neighborhoods, and provides an important link between three blufftop parks along a 0.5 mile stretch of coast. The project is inconsistent with Coastal Act and LCP policies requiring dedication of vertical access when there are no suitable alternatives nearby and does not conform with zoning ordinance standards for designing access paths. Additionally, the property owner has undertaken unpermitted development to preclude access at this location.

Therefore, a substantial issue is raised.



2. Conservation, Open Space, and Growth

a. Relevant Local Coastal Program Provisions

GP/LUP Policy P-13: Natural Resource Preservation

All land use proposals shall respect, preserve, and enhance the most important natural resources of Pismo Beach; those being the ocean and beaches, hills, valleys, canyons, and cliffs; and the Pismo and Meadow Creek streams, marsh and estuaries.

GP/LUP Policy P-14: Natural Resource Preservation

The ocean, beach and the immediate abutting land are recognized as an irreplaceable national resource to be enjoyed by the entire city and region...The purpose of the beach is to make available to the people for their benefit and enjoyment forever, the scenic natural, cultural, and recreational resources of the ocean, beach and related uplands.

GP/LUP Policy P-16: Historic Ambiance

Pismo Beach contains the historic ambiance of the small California beach town. This is particularly evident in downtown and Shell Beach. Although hard to define, the preservation of this ambiance is important and the city shall encourage its preservation...

b. Analysis

Appellant, Tim Page, contends the approved project raises issues with respect to conformance with the certified LCP policies protecting/preserving the City's important natural resources and the preservation of the town's historic ambiance. It is implied that the approved project will somehow diminish the City's character and the quality of life of its residents by authorizing the expansion of the residence and consequent loss of the public access path used for generations to gain access to Spyglass Park and the shoreline below. The appellant contends there is no reasonable justification for the City's decision to allow the property owner to interfere with the public's continued right to use the pathway for access to the sea. As noted in the natural resource provisions above, the beach, ocean, and abutting land are the most important and irreplaceable assets of the community. And it is true that Pismo Beach retains the character of a small California beach town. It is not, however, clear what affect, if any, the approved development (± 125 sq. ft. garage addition) would have on the City's historic ambiance. It is equally difficult to estimate the impact of the approved development on the natural resource that is the ocean or beach. Certainly, the connection between the approved development and the impacts on access can be made (see Substantial Issue Finding 1 above), but the contentions raised with respect to conformance with the natural resource and historic ambiance policies cannot be well supported. Thus, no substantial issue is raised.

